

STATE OF KANSAS

Proposed

DEPARTMENT OF LABOR

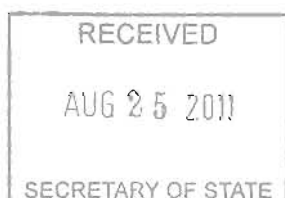
DIVISION OF WORKERS COMPENSATION

NOTICE OF HEARING ON PROPOSED ADMINISTRATIVE REGULATION

A public hearing will be conducted at 10:00 a.m. November 4, 2011 in the 7th floor conference room, 800 SW Jackson, Topeka, Kansas, to consider the adoption of an amendment to a permanent regulation of the Division of Workers Compensation.

The 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to the Director of the Division of Workers Compensation, 800 SW Jackson, Suite 600, Topeka, KS 66612-1227 or by e-mail to Anne Haught at anne.haught@dol.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulation during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit oral presentation to 10 minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Request for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Anne Haught, at (785) 296-0850 or anne.haught@dol.ks.gov. Parking for individuals with disabilities is located on the second level of 800 SW Jackson's enclosed parking. Also, the west entrance of the building is accessible to individuals with disabilities.



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A complete copy of the regulation and the economic impact statement may be obtained by contacting the division.

The following is a brief summary of the proposed regulation:

51-3-8. **Pretrial stipulations** The 2011 legislature modified the language of the workers compensation act in House Bill 2134, the proposed changes to this regulation are made in accordance with those changes. The language has been changed to include changing “accidental injury” to “personal injury”, removing the language “or physical restoration” and separating accident and repetitive trauma questions. The vocation rehabilitation evaluation question has been removed since it is no longer a requirement of the statute. This language does not extend benefits but clarifies existing language.

Copies of the regulation and its economic impact statement may be obtained from the Division of Workers Compensation, 6th Floor, 800 SW Jackson, Topeka, KS 66612-1227, (785) 296-0850 or through an e-mail request to Anne Haught at anne.haught@dol.ks.gov.



51-3-8. ~~Pre-trial~~ Pretrial stipulations. The parties shall be prepared at the first hearing to agree on the claimant's average weekly wage ~~except when,~~ unless the weekly wage is to be made an issue in the case.

(a) Before the first hearing takes place, the parties shall exchange medical information and confer as to what issues can be stipulated to and what issues are to be in dispute in the case. The following stipulations shall be used by the parties in every case:

QUESTIONS TO CLAIMANT

1- (1) In what county is it claimed that claimant met with personal injury by accident? (If in a different county from that in which the hearing is held, then the parties shall stipulate that they consent to the conduct of the hearing in the county in which it is being held.)

2- (2) Upon what date is it claimed that claimant met with personal injury by accident?

(3) Upon what date is it claimed that claimant met with personal injury by repetitive trauma?

QUESTIONS TO RESPONDENT

3- (4) Does respondent admit that claimant met with personal injury by accident on the date alleged?

(5) Does respondent admit that claimant met with personal injury by repetitive trauma on the date alleged?

4- (6) Does respondent admit that claimant's alleged ~~accidental~~ personal injury "arose out of and in the course" of claimant's employment?

5- (7) Does respondent admit proper notice?

6- (8) Does respondent admit that the relationship of employer and employee existed?

7- (9) Does respondent admit that the parties are covered by the Kansas workers compensation

act?



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8. (10) Does respondent admit that claim was made?

9. (11) Did the respondent have an insurance carrier on the date of the alleged accident? If so, what is the name of the insurance company? Was the respondent self-insured?

(12) Does respondent admit that the accident or repetitive trauma was the prevailing factor causing the injury, the medical condition, and the resulting disability or impairment?

QUESTIONS TO BOTH PARTIES

~~10.~~ (13) What was the average weekly wage?

~~11.~~ (14) Has any compensation been paid?

~~12.~~ (15) Has any medical or hospital treatment been furnished? Is claimant making claim for any future medical treatment ~~or physical restoration~~?

~~13.~~ (16) Has claimant incurred any medical or hospital expense for which reimbursement is claimed?

~~14.~~ (17) What was the nature and extent of the disability suffered as a result of the alleged ~~accident~~ injury?

~~15.~~ (18) What medical and hospital expenses does the claimant have?

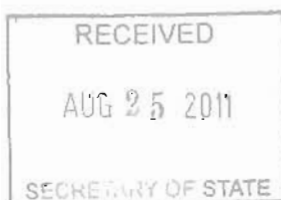
~~16.~~ (19) What are the additional dates of temporary total disability, if any are claimed?

~~17. Is there a need for the claimant to be referred for a vocational rehabilitation evaluation?~~

~~18.~~ (20) Is the workers compensation fund to be impleaded as an additional party?

~~19. What witnesses will each party have testify at hearing or by deposition in the trial of the case?~~

~~20.~~ (21) Have the parties agreed upon a functional impairment rating?



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The same stipulations shall be used in occupational disease cases ~~with the exception,~~
except that questions regarding “~~accidental~~ personal injury” shall be changed to discover facts
concerning “disability from occupational disease” or “disablement.”

(b) An informal ~~pre-trial~~ pretrial conference shall be held in each contested case before
testimony is taken in a case. At these conferences the administrative law judge shall determine
from the parties what issues have not been agreed upon. If the issues cannot be resolved, the
stipulations and issues shall be made a part of the record.

(c) The respondent shall be prepared to admit any and all facts that the respondent cannot
justifiably deny and to have payrolls available in proper form to answer any questions that might
arise as to the average weekly wage. Evidence shall be confined to the matters actually
ascertained to be in dispute. The administrative law judge shall not be bound by rules of civil
procedure or evidence. Hearsay evidence may be admissible unless irrelevant or redundant.

(d) All parties shall be given reasonable opportunity to be heard. The testimony taken at
the hearing shall be reported and transcribed. That testimony, together with documentary
evidence introduced, shall be filed with the division of workers compensation, where the
evidence shall become a permanent record. ~~Any~~ Each award or order made by the administrative
law judge shall be set forth in writing, with copies mailed to the parties.

(e) Permission to withdraw admissions or stipulations shall be decided by the
administrative law judge, depending on the circumstances in each instance.

(f) Subpoena forms shall be furnished by the director upon request. The party
subpoenaing witnesses shall be responsible for the completion, service, and costs in connection

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with the subpoenas. (Authorized by K.S.A. 44-573; implementing K.S.A. 2010 Supp. 44-523, as amended by ~~L. 1997, Ch. 125, Sec. 6~~ L. 2011, ch. 55, sec. 17, and K.S.A. ~~1996~~ 2010 Supp. 44-551, ~~as amended by L. 1997, Ch. 125, Sec. 12~~; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998; amended P- _____.)



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**KANSAS DEPARTMENT OF LABOR
DIVISION OF WORKERS COMPENSATION
ECONOMIC IMPACT STATEMENT
K.A.R. 51-3-8**

I. Summary of Proposed Regulation, Including Its Purpose.

The 2011 legislature modified the language of the workers compensation act in House Bill 2134, the proposed changes to this regulation are made in accordance with those changes. The language has been changed to include changing “accidental injury” to “personal injury”, removing the language “or physical restoration” and separating accident and repetitive trauma questions. The vocation rehabilitation evaluation question has been removed since it is no longer a requirement of the statute. K.A.R. 51-3-8 is amended to reflect these changes.

II. Reason the Proposed Regulation is Required, Including Whether or Not the Regulation is Mandated by Federal Law.

The proposed revision to K.A.R. 51-3-8 reflects the changes found in House Bill 2134. This regulation is not mandated by federal law, so the regulation does not exceed the requirements of federal law.

III. Anticipated Economic Impact on Private Individuals and Business and Self-Insured Governmental Units and School Districts.

The proposed amendment to regulation K.A.R. 51-3-8 will have no impact on workers compensation benefits paid by employers or their insurance carriers. The amendment reflects changes that are implemented in House Bill 2134. These changes clarify existing language of the statute without extending benefits.

IV. Economic Impact on the Division of Workers Compensation.

This amendment will have no economic impact on the division of workers compensation or Kansas department of labor. This amendment reflects the changes made in House Bill 2134 and will have no impact on the medical costs for workers compensation claims of state employees.

V. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.

The language change to K.A.R. 51-3-8 reflects the changes made to the statute and therefore no other language was considered.

